U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A12 424 316 - Big Spring

Date: APR 5 1996

In re: LESLIE CHARLES COHEN a.k.a. Larry Cohen a.k.a. Alan Cohen

IN DEPORTATION PROCEEDINGS

INTERLOCUTORY APPEAL

INDEX

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Order: Sec. 241(a)(1)(A), I&N Act [8 U.S.C. § 1251(a)(1)(A)] - Excludable at entry under section 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(2)(A)(i)(I)] - Crime involving moral turpitude

Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] - Entered without inspection

In a decision dated October 2, 1995, an Immigration Judge denied the respondent's motion to change venue of his deportation proceedings from Dallas, Texas, 1/ to Los Angeles, California, or Phoenix, Arizona. The respondent filed an appeal from that decision. The request for oral argument is denied. 8 C.F.R. § 3.1(e).

I. JURISDICTION

The decision which the respondent seeks to have reviewed is interlocutory in nature. This Board does not ordinarily entertain interlocutory appeals. See Matter of Ruiz-Campuzano, 17 I&N Dec. 108 (BIA 1979); Matter of Ku, 15 I&N Dec. 712 (BIA 1976); Matter of Sacco, 15 I&N Dec. 109 (BIA 1974). However, we have on occasion ruled on the merits of an interlocutory appeal where we deemed it necessary to address important jurisdictional questions regarding the administration of the immigration laws, or to correct recurring

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1/ We note that the Immigration Court in Dallas, Texas, has administrative control of the respondent's deportation proceedings, although the respondent is detained at the Big Spring Correctional Center located in Big Spring, Texas.

problems in the handling of cases by Immigration Judges. See, e.g., Matter of Guevara, 20 I&N Dec. 238 (BIA 1990, 1991); see also, Matter of Garcia-Reyes, 19 I&N Dec. 830 (BIA 1988), and cases cited therein. We have concluded that it is appropriate for us to rule on this interlocutory appeal.

II. BACKGROUND INFORMATION

The respondent in this case is alleged to be a native and citizen of Canada who entered the United States at an unknown place and unknown date without being inspected by an immigration officer. It is further alleged that on June 12, 1978, he was convicted in the Judicial District of York, Ontario, Canada, for the offense of Counsel to Commit Murder, in violation of Section 422 of Martin's Annual Criminal Code (1977). On March 8, 1995, the Immigration and Naturalization Service issued an Order to Show Cause and Notice of Hearing (Form I-221) against the respondent, charging him with deportability on the grounds set forth above. The respondent is detained in the custody of the Bureau of Prisons.

On October 2, 1995, the respondent appeared before an Immigration Judge without counsel at a hearing in the Big Spring Correctional Facility in Big Spring, Texas, the place of his incarceration. According to the respondent, the Immigration Judge orally informed the respondent that he lacked the authority to grant bail or to change venue. Subsequently, the Immigration Judge issued a written order stating that he had "no authority to determine location of respondent's imprisonment."

III. ISSUE PRESENTED

The issue presented in this case is whether an Immigration Judge has the authority to change venue in a deportation case where the alien is in the physical custody of the federal Bureau of Prisons, or is subject to the provisions under sections 242(i) and 242A of the Act, 8 U.S.C. §§ 1252 and 1252a.

IV. CHANGE OF VENUE

According to the regulations, venue lies at the Immigration Court where the charging document is filed. 8 C.F.R. § 3.20(a) (1995). The regulations further provide that an Immigration Judge may change venue for "good cause" upon motion by one of the parties. 8 C.F.R. § 3.20(b). We have held that good cause is determined by balancing the relevant factors, including administrative conveniences, expeditious treatment of the case,

location of witnesses, cost of transporting witnesses or evidence to a new location, and factors commonly associated with the alien's place of residence. See Matter of Rahman, 20 I&N Dec. 480 (BIA 1992); Matter of Rivera, 19 I&N Dec. 688 (BIA 1988); Matter of Velasquez, 19 I&N Dec. 377 (BIA 1986); see also 8 C.F.R. § 3.20(b).

In his appeal, the respondent challenges the Immigration Judge's conclusion that he had no authority to change venue in the respondent's case. 2/ He further asserts that the changing of venue of a hearing is not dependent on the place of detention. We agree.

Board precedent specifically provides that an Immigration Judge has the authority to change venue in exclusion and deportation proceedings, despite the fact that an alien is detained pending proceedings. See Matter of Rahman, supra, and Matter of Dobere, 20 I&N Dec. 188 (BIA 1990). Although the aliens in both Rahman and Dobere were detained in the custody of the Service, neither the Act nor the regulations require that an alien be in the custody of the Service before a motion to change venue may be entertained. Lovell v. INS, 52 F.3d 458 (2d Cir. 1995) (expedited deportation hearing requirement for aliens convicted of aggravated felonies was not per se prohibition against any venue change). Instead, as noted above, an Immigration Judge's decision to change venue in both exclusion and deportation proceedings is subject to the existence of good cause for such a change. Accordingly, aliens held in the custody of the Bureau of Prisons may be granted a change of venue upon a showing of good cause.

In the instant case, the Immigration Judge's order was conclusory and showed no evaluation or balancing of the factors we have found relevant to a finding of good cause for a change of venue. Cf Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (Immigration Judge must identify and fully explain the reasons for denial of motion to reopen to allow for meaningful review by the Board). Although the Immigration Judge correctly concluded that he has no authority over the place of detention, this alone is not a sufficient reason to deny a change of venue.

2/ The regulations dictate that bond proceedings shall be separate and apart from deportation proceedings. See 8 C.F.R. §§ 3.19(d) and 242.2(b). Consequently, we cannot entertain any arguments regarding the respondent's request for bond redetermination since his motion to change venue is part of his deportation hearing.

For the above-discussed reasons, the record will be remanded to the Immigration Judge for a full and prompt hearing regarding the respondent's motion to change venue.

Accordingly, the following order will be entered.

ORDER: The interlocutory appeal is sustained and the record is remanded to the Immigration Judge for further proceedings in accordance with the foregoing decision.

FOR THE BOARD